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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,467	02/24/2004	Denis Alfred Gonzales	CM2599C	8592

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EXAMINER

LEWIS, AMY A

ART UNIT PAPER NUMBER

1614

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/785,467	Applicant(s) GONZALES ET AL.	
	Examiner Amy A. Lewis	Art Unit 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,10,12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9,10,12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>24 Feb. 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

PD

DETAILED ACTION

Status of the Case

The preliminary Amendments and remarks, filed 24 February 2004, have been received and entered into the application. Accordingly, the specification has been amended to include cross-reference information, claims 7, 9, 10, and 12 have been amended, and claims 8, 11, and 14 have been cancelled. Claims 1-7, 9-10, and 12-13 are pending in the present application.

Priority to PCT/US02/25304, filed 9 August 2002, is acknowledged.

Claim Rejections - 35 USC § 112, 2nd paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 1) Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 is in improper form in that it depends from cancelled claim 11, and is therefore incomplete.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- 1) Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Cherukuri et al. (WO 99/59428).

Cherukuri et al. teach a chewing gum composition containing a gum base and an absorbent material, in the form of a flavor encapsulation, for absorption of malodorous substances from the mouth (abstract; p. 4, lines 14-27; p. 7, lines 17-25; p. 11, Example 1). The reference also teaches that the absorbent material can comprise one or more other substances with sulfur absorbing ability, and combinations thereof (p. 7, lines 17-25). Examples listed include several cellulosic materials, which are carbon based and thus meet the limitations of instant claim 2.

- 2) Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Song et al. (US Pat. 5,128,155).

Song et al. teach a chewing gum composition containing a gum base and absorbing agents such as silica dioxide or zeolites (col. 5, line 60 – col. 6, line 45; col. 3 line 48- col. 4 line 2; claim 1). The reference does not state *per se* that zeolites or silica dioxide are “odor absorbing,” but this would simply be an inherent characteristic of these compounds. In that regard, note that the prior art discusses the absorptive properties of those compounds (col. 3, line 48 - col. 4, line 2).

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3) Claims 1-4, 7, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Huzinec et al. (US Pat. 5,912,030).

Huzinec et al. teach a chewing gum comprising a gum base, carriers, flavors, and sweeteners (abstract; col. 5, lines 1-20 (table); claims 1 and 4). The reference teaches properties of the carrier include absorption and/or adsorption, and examples of such carriers include zeolites and aluminum silicates (col. 2, lines 8-20; claims 1 and 4; abstract). The composition may contain carriers as zeolites, aluminum silicates, and mixtures thereof (claim 4). Specifically, the table at col. 5 teaches 15% to 35% gum base, and multiple carriers in weight percent ranges from 0.005% to 70%, of the total weight of the gum, thus meeting the limitations of instant claims 7 and 9.

4) Claims 1-4, 7, 9, 10, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Beem et al. (WO 95/03709).

Van Beem teaches a chewing gum composition for oral hygiene, containing a gum base, β -cyclodextrin inclusion complex, sweeteners (such as sugar or glucose), and flavoring agents (p. 3, paragraphs 3-4; p. 4, section "Description of the Invention"; p. 5, Example 1). The β -cyclodextrin inclusion complex contains active flavoring agents (p. 4, last paragraph). The reference teaches that the composition can contain the inclusion complex in proportions ranging from 0.2 to about 6%, 10-15% (p. 5, paragraph 2), and cites specific examples of 1.66% and 0.9% (p. 6, paragraphs 6 and 8), by weight of the total composition. The reference also teaches the gum base is 15-30% by weight of the total composition (p. 4, paragraph 3 under the section "Description of the Invention").

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 1) Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huzinec et al. (US Pat. 5,912,030).

Huzinec et al. is applied as above. Huzinec et al. teach a chewing gum comprising a gum base, a carrier, flavors, and sweeteners (abstract; col. 5, lines 1-20 (table); claim 1). The reference teaches properties of the carrier include absorption and/or adsorption, and examples of such carriers include zeolites and aluminum silicates (col. 2, lines 8-20; claims 1 and 4; abstract). The composition may contain carriers as zeolites, aluminum silicates, and mixtures thereof (claim 4). Specifically, the reference teaches that the composition may contain multiple carriers in weight percent ranges from 0.005% to 70% of the total weight of the gum, which when

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comparing weight percentages of the carriers, meets the limitation of a weight ratio of 1:5 to 5:1, of instant claims 5 and 6.

Huzinec et al. teach a chewable gum composition which contains all of the components of the instant application, in particular two odor absorbing materials in the form of zeolites and aluminum silicates. However the reference does not teach the specific combination of ingredients, i.e. too much “picking and choosing” is required from various points in the reference to be anticipatory. It would have been obvious to make the specific combination, however, simply by following the clear suggestions of the Huzinec et al.

Relevant Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are directed to oral compositions and chewable compositions containing zeolite-based materials, silica-based materials, cyclodextrin, chewable base, flavoring, and sweeteners.

- Nelson, US Pat. 6,261,540
- Schreiber et al., US Pat. 4,187,287
- Barry et al., US Pat. 6,365,130 B1
- Myers et al., US Pat. 5,851,553.

Conclusion

Claims 1-7, 9-10, and 12-13 are rejected. No claims are allowed.

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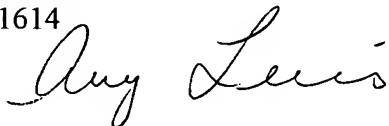
Contact Information:

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy A. Lewis whose telephone number is (571) 272-2765. The examiner can normally be reached on Monday-Friday, 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Low can be reached on (571) 272-0951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Amy A. Lewis
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